SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 768

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR

vs.

WALTER S. DICKEY AND RALPH ELLIS

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

INDEX

	Original	Print
Record from District Court of the United States, Western District of Missouri	a	1
Citation and service [omitted in printing]	a	1
Writ of error and return	b	1
Caption [omitted in printing]	1	2
Indictment	2	2
Plea of not guilty	12	9
Minute entries	13	9
Demurrer of Walter S. Dickey	14	10
Demurrer of Ralph Ellis	28	19
Order sustaining demurrers	42	29
Minute entry	43	29
Petition for and order allowing writ of error	44	30
Assignment of errors	45	45
Opinion, Reeves, J.	46	31
Clerk's certificate	52	34

a [Citation in usual form, showing service on Maurice H. Winger, filed Dec. 6, 1924, omitted in printing.]

b In United States District Court, Western Division of the Western District of Missouri

UNITED STATES OF AMERICA, PLAINTIFF
vs. No. 6812
WALTER S. DICKEY AND RALPH ELLIS, DEFENDANTS

Writ of Error and Return. Filed December 6, 1924

UNITED STATES OF AMERICA, *ss*:

The President of the United States of America, to the honorable Judge Albert L. Reeves, a judge of the District Court of the United States for the Western Division of the Western District of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the November, 1924, term thereof, between the United States of America, plaintiff, and Walter S. Dickey and Ralph Ellis, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, totgether with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, District of Columbia, and filed in the office of the clerk of the United States Supreme Court on or before the 6th day of January, 1925, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable William H. Taft, Chief Justice of the United States, this 6th day of December, 1924, in the year of our Lord, one thousand nine hundred and twenty-four.

[SEAL.] EDWIN R. DURHAM, *Clerk*,
By H. C. SPAULDING,
Deputy Clerk of the District Court of the United States for the West. Dist. of Mo.

Allowed:
ALBERT L. REEVES,
Judge.

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri.

In obedience to the command of the within writ, I herewith transmit to the United States Supreme Court a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In witness whereof I hereunto subscribed my name and affix the seal of the said District Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 6th day of December, 1924.

[SEAL.] EDWIN R. DURHAM, *Clerk.*
By H. C. SPAULDING, *Deputy.*

[Caption omitted.]

2 In United States District Court

[Title omitted.]

Indictment filed November 25, 1924

The grand jurors of the United States of America, duly and legally chosen, selected, summoned, and drawn from the body of the western division of the Western District of Missouri, and duly and legally examined, empaneled, sworn, and charged to inquire of and concerning crimes and offenses against the United States in the western division of the Western District of Missouri, on their oath present and charge that on or about the 15th day of March, 1924, at Kansas City, Jackson County, Missouri, in the western division of the Western District of Missouri and within the jurisdiction of this court, the income return of one Frank C. Niles was made to Noah Crooks, then and at all time hereinafter mentioned the collector of internal revenue of the United States in and for the Sixth District of Missouri at Kansas City, Missouri, in said western division of the Western District of Missouri, and showing, among other things, the amount of income tax of the said Frank C. Niles accruing to the United States for the taxable year 1923, to be thirty-two thousand three hundred and eighty-one dollars and ninety-nine cents ($32,381.99); that said income return of the said Frank C. Niles thereupon became a public record in the office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, upon which the income tax of the said Frank C. Niles in the said sum of thirty-two thousand three hundred and eighty-one dollars and ninety-nine cents ($32,381.99) for the said taxable year 1923 was determined by the Commissioner of Internal Revenue of the United States and thereafter paid to the said collector of internal revenue by said Frank C. Niles, after making such deductions as were authorized by law; that thereafter, to-wit, on or about October 24, 1924, a list of income-tax payers within the said collec-

tion district, containing the name of Frank C. Niles, showing
3 the amount of said income tax, determined as aforesaid, and paid by him to the said collector of internal revenue, was prepared and made available to inspection in the said office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, for all lawful purposes and in the manner determined by said Commissioner of Internal Revenue, but not for the purposes of being printed or published in newspapers or public prints.

That upon all the dates herein referred to Walter S. Dickey was the owner and editor and Ralph Ellis was the managing and supervising editor of certain newspapers and public prints called "Kansas City Post," the "Kansas City Journal," and the "Kansas City Journal-Post," then printed and published and circulating extensively in the said western division of the Western District of Missouri; that on said October 24, 1924, at Kansas City, State of Missouri, aforesaid, in the said western division of the Western District of Missouri, the said Walter S. Dickey and Ralph Ellis, having examined and caused to be examined by and through their agents said list of taxpayers in said office of said collector of internal revenue, unlawfully, and in a manner not provided by law, did print and publish in the issue of said Kansas City Post of that date a part of said income return, then and there well knowing it to be such, to wit, the part thereof showing the name of said Frank C. Niles and the amount of his said income tax, in words and figures following:

"Kansas City income tax returns, as shown in the records of the office of the internal revenue collector, give the following information, the amount of tax shown being that computed before the 25 per cent reduction allowed by Congress was deducted:

	Tax
Frank C. Niles	$32,381.99"

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT

And the grand jurors aforesaid, upon their oath aforesaid, do further present and charge that on or about the 15th day of
4 March, 1924, at Kansas City, Jackson County, Missouri, in the western division of the Western District of Missouri and within the jurisdiction of this court, the income return of one Frank M. Barnardin was made to Noah Crooks, then and at all times hereinafter mentioned the collector of internal revenue of the United States in and for the Sixth District of Missouri at Kansas City, Missouri, in said western division of the Western District of Missouri, and showing, among other things, the amount of income tax of the said Frank M. Bernardin accruing to the United States for the taxable year 1923, to be one thousand four hundred and forty dollars and ninety-three cents ($1,440.93); that said income return

of the said Frank M. Bernardin thereupon became a public record in the office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, upon which the income tax of the said Frank M. Bernardin in the said sum of one thousand four hundred and forty dollars and ninety-three cents ($1,440.93) for the said taxable year 1923 was determined by the Commissioner of Internal Revenue of the United States and thereafter paid to the said collector of internal revenue by said Frank M. Bernardin; that thereafter, to wit, on or about October 25, 1924, a list of income-taxpayers within the said collection district, containing the name of Frank M. Bernardin, showing the amount of said income tax, determined as aforesaid, and paid by him to the said collector of internal revenue, was prepared and made available to inspection in the said office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, for all lawful purposes and in the manner determined by said Commissioner of Internal Revenue, but not for the purposes of being printed or published in newspapers or public prints.

That upon all the dates herein referred to, Walter S. Dickey was the owner and editor and Ralph Ellis was the managing and supervising editor of certain newspapers and public prints called the "Kansas City Post," the "Kansas City Journal," and the "Kansas City Journal-Post," then printed and published and circulating extensively in the said western division of the Western District of Missouri; that on said October 25, 1924, at Kansas City, State of Missouri, aforesaid, in the said western division of the Western District of Missouri, the said Walter S. Dickey and Ralph Ellis, having examined and caused to be examined by and through their agents said list of taxpayers in said office of said collector of internal revenue, unlawfully, and in a manner not provided by law, did print and publish in the issue of said Kansas City Journal of that date a part of said income return, then and there well knowing it to be such, to-wit, the part thereof showing the name of said Frank M. Bernardin, and the amount of his said income tax, in words and figures following:

"Additional Kansas City income tax assessment after the reduction of 25 per cent permitted under the income tax laws of 1924:

Frank M. Bernardin---------- $1,440.93"

contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT

And the grand jurors aforesaid, upon their oath aforesaid, do further present and charge that on or about the 15th day of March 1924, at Kansas City, Jackson County, Missouri, in the western division of the Western District of Missouri and within the jurisdiction of this court, the income return of one Harry Brewer was made to Noah Crooks, then and at all times hereinafter mentioned the col

lector of internal revenue of the United States in and for the Sixth District of Missouri at Kansas City, Missouri, in said western division of the Western District of Missouri, and showing, among other things, the amount of income tax of the said Harry Brewer accruing to the United States for the taxable year 1923, to be seventeen dollars and forty-two cents ($17.42); that said income return of the said Harry Brewer thereupon became a public record in the office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, upon which the income tax of the said Harry Brewer in the said sum of seventeen dollars and forty-two cents $(17.42) for the said taxable year 1923 was determined by the Commissioner of Internal Revenue of the United States and there-
6 after paid to the said collector of internal revenue by said Harry Brewer; that thereafter, to-wit, on or about October 25, 1924, a list of income-tax payers within the said collection district, containing the name of Harry Brewer, showing the amount of said income tax, determined as aforesaid, and paid by him to the said collector of internal revenue, was prepared and made available to inspection in the said office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, for all lawful purposes and in the manner determined by said Commissioner of internal revenue, but not for the purposes of being printed or published in newspapers or public prints.

That upon all the dates herein referred to, Walter S. Dickey was the owner and editor and Ralph Ellis was the managing and supervising editor of certain newspapers and public prints called the "Kansas City Post," the "Kansas City Journal," and the "Kansas City Journal-Post," then printed and published and circulating extensively in the said western division of the Western District of Missouri; that on said October 25, 1924, at Kansas City, State of Missouri, aforesaid, in the said western division of the Western District of Missouri, the said Walter S. Dickey and Ralph Ellis, having examined and caused to be examined by and through their agents said list of taxpayers in said office of said collector of internal revenue, unlawfully, and in a manner not provided by law, did print and publish in the issue of said Kansas City Journal of that date a part of said income return, then and there well knowing it to be such, to-wit, the part thereof showing the name of said Harry Brewer, and the amount of his said income tax, in words and figures following:

"Additional Kansas City income tax assessment after the reduction of 25 per cent permitted under the income tax laws of 1924:

Harry Brewer---------- $17.42"

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

7 FOURTH COUNT

And the grand jurors aforesaid, upon their oath aforesaid, do further present and charge that on or about the 15th day of March,

1924, at Kansas City, Jackson County, Missouri, in the western division of the Western District of Missouri and within the jurisdiction of this court, the income return of one Mrs. Logan Clendening was made to Noah Crooks, then and at all times hereinafter mentioned the collector of internal revenue of the United States in and for the Sixth District of Missouri at Kansas City, Missouri, in said western division of the Western District of Missouri, and showing, among other things, the amount of income tax of the said Mrs. Logan Clendening accruing to the United States for the taxable year 1923, to be two thousand two hundred and fifty-four dollars and sixty-eight cents ($2,254.68); that said income return of the said Mrs. Logan Clendening thereupon became a public record in the office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, upon which the income tax of the said Mrs. Logan Clendening in the said sum of two thousand two hundred and fifty-four dollars and sixty-eight cents ($2,254.68) for the said taxable year 1923 was determined by the Commissioner of Internal Revenue of the United States and thereafter paid to the said collector of internal revenue by said Mrs. Logan Clendening; that thereafter, to-wit, on or about October 25, 1924, a list of income-tax payers within the said collection district, containing the name of Mrs. Logan Clendening, showing the amount of said income tax, determined as aforesaid, and paid by her to the said collector of internal revenue, was prepared and made available to inspection in the said office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, for all lawful purposes and in the manner determined by said Commissioner of Internal Revenue, but not for the purposes of being printed or published in newspapers or public prints.

That upon all the dates herein referred to, Walter S. Dickey was the owner and editor and Ralph Ellis was the managing and supervising editor of certain newspapers and public prints,
8 called the "Kansas City Post," the "Kansas City Journal," and the "Kansas City Journal-Post," then printed and published and circulating extensively in the said western division of the Western District of Missouri; that on said October 25, 1924, at Kansas City, State of Missouri, aforesaid, in the said western division of the Western Disrtict of Missouri, the said Walter S. Dickey and Ralph Ellis, having examined and caused to be examined by and through their agents said list of taxpayers in said office of said collector of internal revenue, unlawfully, and in a manner not provided by law, did print and publish in the issue of said Kansas City Post of that date a part of said income return, then and there well knowing it to be such, to-wit, the part thereof showing the name of said Mrs. Logan Clendening, and the amount of her said income tax, in words and figures following:

"An additional list of Kansas Cityans and the amount of income tax they paid on 1923 incomes was made public this morning by the internal revenue collector's office. In giving out the information, it

was stated that if newspapers published them it would be at their own risk.

Mrs. Logan Clendening---------- $2,254.68"

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

FIFTH COUNT

And the grand jurors aforesaid, upon their oath aforesaid, do further present and charge that on or about the 15th day of March, 1924, at Kansas City, Jackson County, Missouri, in the western division of the Western District of Missouri and within the jurisdiction of this court, the income return of one D. M. Pinkerton was made to Noah Crooks, then and at all times hereinafter mentioned the collector of internal revenue of the United States in and for the Sixth District of Missouri at Kansas City, Missouri, in said western division of the Western District of Missouri, and showing, among other things, the amount of income tax of the said D. M. Pinkerton accruing to the United States for the taxable year 1923, to be thirty-eight dollars and sixty-one cents ($38.61); that said income return of the said D. M. Pinkerton thereupon be-
9 came a public record in the office of said collector of internal revenue at Kansas City, State of Missouri, aforesaid, upon which the income tax of the said D. M. Pinkerton in the said sum of thirty-eight dollars and sixty-one cents ($38.61) for the said taxable year 1923 was determined by the Commissioner of Internal Revenue of the United States and thereafter paid to the said collector of internal revenue by said D. M. Pinkerton; that thereafter, to wit, on or about October 25, 1924, a list of income-tax payers within the said collection district, containing the name of D. M. Pinkerton, showing the amount of said income tax, determined as aforesaid, and paid by him to the said collector of internal revenue, was prepared and made available to inspection in the said office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, for all lawful purposes and in the manner determined by said Commissioner of Internal Revenue, but not for the purpose of being printed or published in newspapers or public prints.

That upon all the dates herein referred to, Walter S. Dickey was the owner and editor and Ralph Ellis was the managing and supervising editor of certain newspapers and public prints called the "Kansas City Post," the "Kansas City Journal," and the "Kansas City Journal-Post," then printed and published and circulating extensively in the said western division of the Western District of Missouri; that on said October 25, 1924, at Kansas Ciyt, State of Missouri, aforesaid, in the said western division of the Western District of Missouri, the said Walter S. Dickey and Ralph Ellis, having examined and caused to be examined by and through their agents said list of taxpayers in said office of said collector of internal reve-

nue, unlawfully, and in a manner not provided by law, did print and publish in the issue of said Kansas City Post of that date a part of said income return, then and there well knowing it to be such, to wit, the part thereof showing the name of said D. M. Pinkerton, and the amount of his said income tax, in words and figures following:

"An additional list of Kansas Cityans and the amount of income tax they paid on 1923 income was made public this morning by the internal revenue collector's office. In giving out the information, it was stated that if newspapers published them it would be at their own risk.

D. M. Pinkerton ..... $38.61"

10 contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SIXTH COUNT

And the grand jurors aforesaid, upon their oath aforesaid, do further present and charge that on or about the 15th day of March, 1924, the income return of one Jeanne Eagles was made to Frank K. Bowers, then and there collector of internal revenue of the United States for the second internal revenue collection district of New York, showing, among other things, the amount of income tax of the said Jeanne Eagles accruing to the United States for the taxable year 1923, to be one thousand eight hundred and eighty-six dollars ($1,886.00); that said income return of the said Jeanne Eagles thereupon became a public record in the office of the said collector of internal revenue at New York, State of New York, aforesaid, upon which the income tax of the said Jeanne Eagles in the said sum of one thousand eight hundred and eighty-six dollars ($1,886.00) for the said taxable year 1923 was determined by the Commissioner of Internal Revenue of the United States and thereafter paid to the said collector of internal revenue by said Jeanne Eagles; that thereafter, to-wit, on or about October 24, 1924, a list of income-tax payers within the said collection district, containing the name of Jeanne Eagles, showing the amount of said income tax, determined as aforesaid, and paid by her to the said collector of internal revenue, was prepared and made available to inspection in the said office of the said collector of internal revenue at New York, State of New York aforesaid, for all lawful purposes and in the manner determined by said Commissioner of Internal Revenue, but not for the purposes of being printed or published in newspapers or public prints.

That upon all the dates herein referred to, Walter S. Dickey was the owner and editor and Ralph Ellis was the managing and supervising editor of certain newspapers and public prints called the "Kansas City Post," the "Kansas City Journal," and the "Kansas City Journal-Post," then printed and published and circulating

extensively in the said western division of the Western
11 District of Missouri; that on said 24th day of October, 1924, at Kansas City, State of Missouri, aforesaid, in the said western division of the Western District of Missouri, the said Walter S. Dickey and Ralph Ellis, having examined and caused to be examined by and through their agents said list of taxpayers in said office of said collector of internal revenue, unlawfully, and in a manner not provided by law, did print and publish in the issue of said Kansas City Post of that date a part of said income return, then and there well knowing it to be such, to-wit, the part thereof showing the name of said Jeanne Eagles, and the amount of her said income tax, in words and figures following:

"In the theater world here were some of the taxes paid:

Jeanne Eagles---------- $1,886"

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

CHARLES C. MADISON,
United States Attorney.

[File endorsement omitted.]

12 In United States District Court

Plea of not guilty

November 26, 1924

Now on this day comes Charles C. Madison, United States attorney, also come the defendants in their own proper persons and with their attorney and waive formal arraignment and enter pleas of not guilty; thereupon their bonds are fixed at $1,000.00 each and their open-court recognizances are entered as follows: Come now Walter S. Dickey and Ralph Ellis, defendants and principals, and Fred L. Dickey and W. Lawrence Dickey and acknowledge themselves jointly and severally to owe and stand indebted to the United States of America in the sum of two thousand dollars to be levied of their respective goods, chattels, lands, and tenements, to be void upon the condition that the said Walter S. Dickey and Ralph Ellis be and appear in this court on the 1st day of December, 1924, and from time to time thereafter to which this cause may be continued by the court, to answer to the charge of the indictment in this cause, and not depart without leave of court; otherwise to remain in full force and effect.

13 In United States District Court

Minute entries

November 28, 1924

This day this cause coming on for further hearing, the Government appearing by Charles C. Madison, United States attorney, the defendants appearing in their own proper persons and by their

attorneys, and, with permission of the court, withdraw their pleas of not guilty heretofore entered herein and file their separate demurrers to each of the six counts of the indictment herein.

December 1, 1924

Now on this day comes Charles C. Madison, United States attorney, also come the defendants in their own proper persons and with counsel, and, by leave of court, withdraw the demurrers heretofore filed herein and file their separate substitute demurrers to the indictment; thereupon the said demurrers are taken up, argued, and submitted to the court and by the court taken under advisement.

Said demurrers are in words and figures as follows, to wit:

14 In United States District Court

[Title omitted.]

Demurrer of Walter S. Dickey to first count of indictment

Comes now Walter S. Dickey in his own proper person into court, and having heard the first count of said indictment read says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Walter S. Dickey, is not bound by the law of the land to answer the same and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating is inconsistent with the statute making income-tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public records and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue district and in such other places as he may determine lists containing the name and postoffice address of each person making an income-tax return in such district, together with the amount of the income tax paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made
15 available to public inspection is an abridgement of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of

Congress approved June 2, 1924, and commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provision of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States which provides that Congress shall make no law abridging the freedom of speech, or of the press, and that said act is, insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states that for the reasons aforesaid and other reasons appearing upon the face of said count of the indictment said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United
16 States, but all such power and authority, if possessed by any government whatsoever, is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, insofar as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states, for all of the reasons aforesaid, said indictment charges no crime or unlawful act cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore, for want of sufficient indictment in this behalf, the said Walter S. Dickey prays judgment and that by the court he may be dismissed and discharged from the said premises in the first count of said indictment specified.

Demurrer of Walter S. Dickey to the second count of indictment

Now comes Walter S. Dickey in his own proper person into court, and having heard the second count of said indictment read, says that the said indictment and the matters therein contained in

manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Walter S. Dickey, is not bound by the law of the land to answer the same and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating is inconsistent with the statute making income-tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public rec-
17 ords and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal-revenue district and in such other places as he may determine, lists containing the name and post-office address of each person making an income-tax return in such district, together with the amount of the income tax paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made available to public inspection is an abridgement of the right of free speech and freedom of the press, in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provisions of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States, which provides that Congress shall make no law abridging the freedom of speech or of the press, and that said act is, in so far as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void,

and defendant further states that for the reasons aforesaid and
18 other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United States, but all such power and authority, if possessed by any government whatsoever, is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, in so far as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states for all of the reasons aforesaid said indictment charges no crime or unlawful act cognizable by this court or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore, for want of sufficient indictment in this behalf, the said Walter S. Dickey prays judgment and that by the court he may be dismissed and discharged from the said premises in the second count of said indictment specified.

Demurrer of Walter S. Dickey to third count of indictment

Now comes Walter S. Dickey in his own proper person into court, and having heard the third count of said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Walter S. Dickey, is not bound by the law of the land to answer the same, and this he is ready to verify.

19 Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating is inconsistent with the statute making income tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public records and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue district and in such other places as he may determine lists containing the name and post office address of each person making an income-tax return in such district, together with the amount of the income tax paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made available to public inspection is an abridge-

ment of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, and commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provisions of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States, which provides that Congress shall make no law abridging the freedom of speech, or of the press, and that said act is insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states that for the reasons aforesaid and other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United States, but all such power and authority, if possessed by any government whatsoever, is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, insofar as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states, for all of the reasons aforesaid, said indictment charges no crime or unlawful act cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore for want of sufficient indictment in this behalf, the said Walter S. Dickey prays judgment and that by the court he may be

dismissed and discharged from the said premises in the third count of said indictment specified.

21 *Demurrer of Walter S. Dickey to fourth count of indictment*

Now comes Walter S. Dickey in his own proper person into court, and having heard the fourth count of said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Walter S. Dickey, is not bound by the law of the land to answer the same and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating is inconsistent with the statute making income tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public records and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue district and in such other places as he may determine lists containing the name and post office address of each person making an income tax return in such district, together with the amount of the income tax paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made available to public inspection is an abridgment of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, and commonly known
22 as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provisions of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States which provides that Congress shall make no law abridging the freedom of speech, or of the

press, and that said act is, insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states that for the reasons aforesaid and other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United States, but all such power and authority, if possessed by any government whatsoever is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, insofar as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states for all of the reasons aforesaid, said indictment charges no crimes or unlawful act
23 cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore for want of sufficient indictment in this behalf, the said Walter S. Dickey prays judgment and that by the court he may be dismissed and discharged from the said premises in the fourth count of said indictment specified.

Demurrer of Walter S. Dickey to fifth count of indictment

Now comes Walter S. Dickey in his own proper person into court, and having heard the fifth count of said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Walter S. Dickey, is not bound by the law of the land to answer the same, and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating is inconsistent with the statute making income tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public records and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue

district and in such other places as he may determine lists containing the name and post-office address of each person making an income tax return in such district, together with the amount of the income paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made available to public inspection is an abridgement of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

24 Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, and commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provision of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States which provides that Congress shall make no law abridging the freedom of speech, or of the press, and that said act is insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states that for the reasons aforesaid and other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit or penalize the publication of such information exists in the Government of the United States, but all such power and authority, if possessed by any government whatsoever, is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

25 Wherefore defendant states that the act of June 2, 1924, in so far as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant

states for all of the reasons aforesaid said indictment charges no crime or unlawful act cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore, for want of sufficient indictment in this behalf, the said Walter S. Dickey prays judgment and that by the court he may be dismissed and discharged from the said premises in the fifth count of said indictment specified.

Demurrer of Walter S. Dickey to sixth count of indictment

Now comes Walter S. Dickey in his own proper person into court, and having heard the sixth count of said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Walter S. Dickey, is not bound by the law of the land to answer the same, and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof, or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating, is inconsistent with the statute making income tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public records, and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue district and in such other places as he may
26 determine lists containing the name and post office address of each person making an income tax return in such district, together with the amount of the income tax paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made available to public inspection is an abridgement of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at New York, State of New York; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, and commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that

might be seen and read by any or all persons whomsoever. Defendant says that any provision of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States which provides that Congress shall make no law abridging the freedom of speech, or of the press, and that said act is, insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states that for the reasons aforesaid and other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the
27 State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United States, but all such power and authority, if possessed by any government whatsover, is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, insofar as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states, for all of the reasons aforesaid, said indictment charges no crime or unlawful act cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore, for want of sufficient indictment in this behalf, the said Walter S. Dickey prays judgment and that by the court he may be dismissed and discharged from the said premises in the sixth count of said indictment specified.

MAURICE H. WINGER,
JAMES A. REED,
DAVID M. PROCTOR,
Attorneys for Walter S. Dickey.

28 In United States District Court

[Title omitted.]

Demurrer of Ralph Ellis to first count of indictment

Comes now Ralph Ellis in his own proper person into court, and having heard the first count of said indictment read, says that the said indictment and the matters therein contained in manner and

form as the same are therein stated and set forth are not sufficient in law, and that he, the said Ralph Ellis is not bound by the law of the land to answer the same and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating is inconsistent with the statute making income-tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public records and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal-revenue district and in such other places as he may determine lists containing the name and post-office address of each person making an income-tax return in such district, together with the amount of the income tax paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made
29 available to public inspection is an abridgement of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, and commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provision of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States, which provides that Congress shall make no law abridging the freedom of speech, or of the press, and that said act is, insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states that for the reasons aforesaid and other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United
30 States, but all such power and authority, if possessed by any government whatsoever, is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, in so far as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states for all of the reasons aforesaid, said indictment charges no crime or unlawful act cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore, for want of sufficient indictment in this behalf, the said Ralph Ellis prays judgment and that by the court he may be dismissed and discharged from the said premises in the first count of said indictment specified.

Demurrer of Ralph Ellis to second count of indictment

Now comes Ralph Ellis in his own proper person into court, and having heard the second count of said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Ralph Ellis, is not bound by the law of the land to answer the same, and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating is inconsistent with the statute making income tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public
31 records and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue district and in such other places as he may determine lists containing the name and post office address of each person making an income tax return in such district, together with the amount of the income tax paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made available to public inspection is an abridgement of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provisions of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States which provides that Congress shall make no law abridging the freedom of speech, or of the press, and that said act is, insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states

32 that for the reasons aforesaid and other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United States, but all such power and authority, if possessed by any government whatsoever, is by the Tenth Amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, insofar as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states, for all of the reasons aforesaid, said indictment charges no crime or unlawful act cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore for want of sufficient indictment in this behalf, the said Ralph Ellis prays judgment and that by the court he may be dismissed and discharged from the said premises in the second count of said indictment specified.

Demurrer of Ralph Ellis to third count of indictment

Now comes Ralph Ellis in his own proper person into court, and having heard the third count of said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Ralph Ellis, is not bound by the law of the land to answer the same, and this he is ready to verify.

33 Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating is inconsistent with the statute making income tax returns upon which the tax has been determined by the Commmissioner of Internal Revenue public records and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue district and in such other places as he may determine lists containing the name and post office address of each person making an income tax return in such district, together with the amount of the income tax paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made available to public inspection is an abridgement of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, and commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provisions of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to

34 the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States, which provides that Congress shall make no law abridging the freedom of speech, or of the press, and that said act is insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states that for the

reasons aforesaid and other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United States, but all such power and authority, if possessed by any government whatsoever, is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, in so far as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states for all of the reasons aforesaid, said indictment charges no crime or unlawful act cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore, for want of sufficient indictment in this behalf, the said Ralph Ellis prays judgment and that by the court he may be dismissed and discharged from the said premises in the third count of said indictment specified.

35 *Demurrer of Ralph Ellis to fourth count of indictment*

Now comes Ralph Ellis in his own proper person into court, and having heard the fourth count of said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Ralph Ellis, is not bound by the law of the land to answer the same and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return which the defendants are charged with violating is inconsistent with the statute making income tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public records and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue district and in such other places as he may determine lists containing the name and post office address of each person making an income tax return in such district, together with the amount of the income tax paid by such person, so that the statute prohibiting the printing

and publishing of that which has already been made available to public inspection is an abridgement of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, and commonly known as the
36 revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provisions of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States which provides that Congress shall make no law abridging the freedom of speech, or of the press, and that said act is insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states that for the reasons aforesaid and other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United States, but all such power and authority, if possessed by any government whatsoever, is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, insofar as it attempts to regulate, prohibit, or penalize the publication aforesaid, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states, for all of the reasons aforesaid, said indictment charges no crimes or unlawful act
37 cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore for want of sufficient indictment in this behalf, the said Ralph Ellis prays judgment and that by the court he may be dismissed and discharged from the said premises in the fourth count of said indictment specified.

Demurrer of Ralph Ellis to fifth count of indictment

Now comes Ralph Ellis in his own proper person into court, and having heard the fifth count of said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Ralph Ellis, is not bound by the law of the land to answer the same, and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in an[illegible]come return which the defendants are charged with violating i[illegible]onsistent with the statute making income-tax returns upon wh[illegible]n the tax has been determined by the Commissioner of Internal Revenue public records and inconsistent with the statute requiring the Commissioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue district and in such other places as he may determine lists containing the name and post-office address of each person making an income-tax return in such district, together with the amount of the income paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made available to public inspection is an abridgement of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

38 Said indictment shows upon its fact that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at Kansas City, Missouri; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, and commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provision of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the

nstitution of the United States, which provides that Congress all make no law abridging the freedom of speech, or of the press, d that said act is in so far as it seeks to forbid or penalize a citizen r printing or publishing the information aforesaid, violative of id amendment to the Constitution, and is null and void, and de- dant further states that for the reasons aforesaid and other reasons ppearing upon the face of said count of the indictment, said count the indictment is not sufficient in law and fails to charge any ime against the defendants.

That said count shows upon its face that the alleged crime at- mpted to be charged is for the publication within the State of lissouri of information already lawfully made public; that no ower or authority to regulate, prohibit, or penalize the publication f such information exists in the Government of the United States, ut all such power and authority, if possessed by any government hatsoever, is by the tenth amendment to the Constitution of the Jnited States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, in so far as it attempts to regulate, prohibit, or penalize the pub- ication aforesaid, is violative of said provision of the Constitution of he United States and of the first amendment to the Constitution of he United States, and is null and void. Defendant states for all of the easons aforesaid said indictment charges no crime or unlawful act ognizable by this court, or by any court of the United States, and s an attempt to deprive the defendant of his rights and liberties s a citizen of the United States.

Wherefore, for want of sufficient indictment in this behalf, the aid Ralph Ellis prays judgment and that by the court he may be dismissed and discharged from the said premises in the fifth count f said indictment specified.

Demurrer of Ralph Ellis to sixth count of indictment

Now comes Ralph Ellis in his own proper person into court, and having heard the sixth count of said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are therein stated and set forth are not sufficient in law, and that he, the said Ralph Ellis, is not bound by the law of the land to answer the same, and this he is ready to verify.

Said indictment is not sufficient in law because the statute of the United States prohibiting the printing or publishing of any income return or any part thereof, or the amount or source of income, profits, losses, or expenditures appearing in any income return, which the defendants are charged with violating, is inconsistent with the statute making income tax returns upon which the tax has been determined by the Commissioner of Internal Revenue public records, and inconsistent with the statute requiring the Commis-

sioner of Internal Revenue to prepare and make available to public inspection in the office of the collector of internal revenue in each internal revenue district and in such other places as he may
40 determine lists containing the name and post office address of each person making an income tax return in such district together with the amount of the income tax paid by such person, so that the statute prohibiting the printing and publishing of that which has already been made available to public inspection is an abridgement of the right of free speech and freedom of the press in violation of the first amendment to the Constitution of the United States.

Said indictment shows upon its face that all of the information which it is charged the defendants printed and published was a public record in the office of the collector of internal revenue at New York, State of New York; that said information was lawfully made available to inspection, and that under the express provisions of the act of Congress approved June 2, 1924, and commonly known as the revenue act, said record was open to inspection by all persons whomsoever, and that said publication of the information had already been made and the record aforesaid was known to and available to the public, and that the indictment is brought against these defendants for the publication of that which had theretofore been lawfully published and which constituted a public record that might be seen and read by any or all persons whomsoever. Defendant says that any provision of the act aforesaid which attempts to forbid or penalize the printing or publication of that which constitutes a public record, or that which is already available to the public, or known to the public, is in conflict with the first amendment to the Constitution of the United States, which provides that Congress shall make no law abridging the freedom of speech, or of the press, and that said act is insofar as it seeks to forbid or penalize a citizen for printing or publishing the information aforesaid, violative of said amendment to the Constitution, and is null and void, and defendant further states that for the reasons aforesaid and other reasons appearing upon the face of said count of the indictment, said count of the indictment is not sufficient in law and fails to charge any crime against the defendants.

That said count shows upon its face that the alleged crime attempted to be charged is for the publication within the
41 State of Missouri of information already lawfully made public; that no power or authority to regulate, prohibit, or penalize the publication of such information exists in the Government of the United States, but all such power and authority, if possessed by any government whatsoever, is by the tenth amendment to the Constitution of the United States expressly reserved to the States, or to the peoples thereof.

Wherefore defendant states that the act of June 2, 1924, insofar as it attempts to regulate, prohibit, or penalize the publication afore-

said, is violative of said provision of the Constitution of the United States and of the first amendment to the Constitution of the United States, and is null and void. Defendant states for all of the reasons aforesaid, said indictment charges no crime or unlawful act cognizable by this court, or by any court of the United States, and is an attempt to deprive the defendant of his rights and liberties as a citizen of the United States.

Wherefore, for want of sufficient indictment in this behalf, the said Ralph Ellis prays judgment and that by the court he may be dismissed and discharged from the said premises in the sixth count of said indictment specified.

MAURICE H. WINGER,
JAMES A. REED,
DAVID N. PROCTOR,
Attorneys for Ralph Ellis.

42 In United States District Court

Order sustaining demurrers

December 2, 1924

Now on this day comes Charles C. Madison, United States attorney, also come the defendants in their own proper persons and with their attorneys; the separate demurrers of the defendants to the indictment, and each count thereof, having heretofore been heard and taken under advisement by the court, and the court being now fully advised in the premises,

It is ordered by the court that said demurrers, and each of them, be in all things sustained, and that said indictment, and each and every count thereof, be, and the same is hereby, dismissed, to which action and ruling of the court the United States by its attorney then and there excepted. It is further ordered that said defendants, and each of them, be discharged herein and their bonds exonerated.

43 In United States District Court

Minute entry

Now on this day comes Charles C. Madison, United States attorney, and files petition for writ of error, together with assignment of errors, which petition is duly sustained by the court and a writ of error allowed to the Supreme Court of the United States; thereupon citation is duly issued and signed by the court admonishing the defendants herein to be and appear before the Supreme Court of the United States at the city of Washington, D. C., thirty days from and after the day said citation bears date.

Comes now the United States attorney and files citation, service of which has been duly acknowledged.

44 In United States District Court

[Title omitted.]

Petition for and order allowing writ of error

Comes now the United States of America, plaintiff herein, by and through Charles C. Madison, United States attorney in and for the Western District of Missouri, and says that on the 2d day of December, 1924, this court entered its judgment and order sustaining the separate demurrers of the defendants to the indictment returned herein based upon the invalidity and construction of the statute upon which said indictment is founded; that in the entering of such judgment and order errors were committed to the prejudice of the plaintiff, all of which will more particularly appear in the assignment of errors which is filed with this petition.

Wherefore, the petition herein prays that a showing of errors may issue in this behalf in the Supreme Court of the United States for the correction of the errors complained of and that a transcript of the record appear in this cause duly authorized and signed by the Chief Justice of the said Supreme Court of the United States.

CHARLES C. MADISON,
United States Attorney and Attorney for Petitioner.

Approved this 6th day of December, 1924.

ALBERT L. REEVES,
Judge.

45 In United States District Court

[Title omitted.]

Assignment of errors

The plaintiff, the United States of America, in connection with its petition for writ of error makes the following assignment of errors which it avers occurred in the proceedings in the above-entitled cause:

First. The court erred in sustaining the demurrer of defendant, Walter S. Dickey, to the several counts of the indictment herein.

Second. The court erred in sustaining the demurrer of the defendant, Ralph Ellis, to the several counts of the indictment herein.

Third. The indictment returned in this cause as against both defendants is good and sufficient under the Constitution and laws of the United States and sets forth facts constituting a violation of the law and should have been held to be sufficient as against the demurrers sustained by the court.

Wherefore, by reason of the premises and on account of the errors committed as aforesaid, the United States of America, the plaintiff herein, prays that judgment rendered in said cause be reversed and set aside.

CHARLES C. MADISON,
United States Attorney and Attorney for plaintiff.

46 In United States District Court

[Title omitted.]

Opinion

December 2, 1924

On demurrers to the indictment.

The indictment in substance, in its several counts, charges the defendants with having made publication in the Kansas City Post of the names and the amount of income tax paid by certain parties. The publication of each separate name, with the amount paid as an income tax, is set forth in the indictment in separate counts.

It is alleged in the indictment that the names of the parties paying such income tax and the amounts so paid had become, under the law, a matter of public record and that at the date of publication, to wit, October 24, 1924, "a list of income tax payers within the said collection district, containing the name of Frank C. Niles, showing the amount of said income tax, determined as aforesaid, and paid by him to the said collector of internal revenue, was prepared and made available to inspection in the said office of the said collector of internal revenue at Kansas City, State of Missouri, aforesaid, for all lawful purposes and in the manner determined by the said Commissioner of Internal Revenue."

The indictment then sets out the specific offense charged by alleging that the list prepared and made available for inspection
47 was "not for the purpose of being printed in newspapers or public prints." In substance, the above charge, changed only as to names, is repeated in the other counts of the indictment.

The several demurrers challenge the sufficiency of the indictment for the reason, as stated by the defendants, that the statute upon which it is based, or upon which its sufficiency depends, is a congressional act attempting to regulate purely local matters and is beyond the scope of granted congressional powers and impinges upon the first amendment to the Constitution of the United States, which forbids the enactment of laws abridging the freedom of the press. Moreover, it is urged that the publication of such lists is inferentially authorized by the congressional act. In view of these contentions, it becomes necessary to examine the revenue act of 1924 and to consider the law with respect to the privileges of the press.

"The pertinent portions of the congressional act provide that—

"The commissioner shall as soon as practicable, in each year cause to be prepared and made available to public inspection in such manner as he may determine in the office of the collector in each internal revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person, making an income-tax return in such district, together with the amount of the income tax paid by such person."

It is both alleged in the indictment and admitted by counsel that the publication was made from this list and contained the data required by the above provision. The indictment, however, is based upon section 1018 of the revenue act, approved June 2, 1924, and particularly a subdivision of said section which was in the law previously and appeared as section 3167 of the Revised Statutes. This section says, among other things, that "it shall be unlawful
for any person to print or publish in any manner whatever
48 not provided by law any income return, or any part thereof,
or source of income, profits, losses, or expenditures appearing in any income return." The first amendment to the Constitution of the United States provides that "Congress shall make no law abridging the freedom of speech or of the press."

The above, with other pertinent matters, will be discussed in the course of the opinion.

1. Concededly, the Congress has no power save such power as may have been specifically granted to it by the Constitution. The provisions of the Constitution clothe Congress with power, among other things, to impose and collect taxes, and in view of one of the amendments to the Constitution, the Congress is given power to enact all necessary legislation to make effective the income-tax amendment. It is academic that when clothed with a main or principal power the Congress possesses such incidental powers as to enable it to make effective its exercise of the chief power, so that all legislation incidental or germane to the principal power may be enacted and such legislation may to a degree embody regulatory provisions. In making effectual the income-tax law, the Congress would undoubtedly have the power to preserve the secrecy of its taxing operations and to protect taxpayers against harm that might accrue from governmental processes.

From the argument and briefs submitted, the foregoing proposition is not challenged. It is equally fundamental, however, that under the guise of a taxing power the Congress can not regulate any matters of a purely local nature and enforce a tax as a penalty for disobedience to such regulation.

In the instant case the publications gave the names of taxpayers and the amounts paid by them. This information had already
been yielded to the public, as a list of the taxpayers with the
49 amounts paid had been made available for public inspection.
The power of Congress to enforce the payment of the tax had been made effective and had been concluded, and with the final exercise of the chief power granted to Congress the incidental powers would of necessity be at an end. Congress would have no authority to continue to exercise an incidental power which in a measure involves local regulation after it had fully enjoyed and exhausted its main power and had gathered all the benefits accruing therefrom.

But it may be argued that such publication is prejudicial to the taxpayer. This may be true; and if the Congress had attempted to suppress all publications, its act probably could have been made

fective, but in this case the Congress attempted to regulate the anner of the publication of the lists. This was clearly a usurpa-n of power. It was not an incident to its power to tax, but viously an attempt on the part of the Congress to say in what anner the people should acquire information made available to em. Moreover, if the enactment is susceptible of the construction ven it by counsel for the Government, the act would be a clear ansgression upon the first amendment to the Constitution, which rbids an abridgment of the freedom of the press.

In this view, the court is constrained to hold that the enactment violative of the first amendment to the Constitution and is void law.

2. In the above discussion, the theory has been followed to the fect that the publication as made offended against the congressional t. I am not inclined to that theory. The statute upon which the dictment is based makes it "unlawful for any person to print or ublish in any manner whatever not provided by law any income turn or any part thereof, or source of income, profits, losses, or expenditures appearing in any income return."

The publication in question did not violate this provision, as no publication was made "in any manner whatever" of "any ncome return or any part thereof," and did not purport to cover ny income return, but, as conceded on argument by the Government he indictment only charged that the publication as made was from list of those who had paid a tax and the amount paid by them, espectively. This was separate and apart from the return and ay have been different from the return, or it may have checked gainst a single item not including the name of the taxpayer in the eturn.

Paragraph "B" of section 257 of the congressional act, as herein-efore set out, enjoins upon the commissioner the duty to have pre-ared and made available to public inspection "lists containing the ame and post-office address of each person making an income-tax eturn, together with the amount of the tax paid by such person." Undoubtedly it was the congressional purpose to preserve the cloak f secrecy upon the returns of income-tax payers, but after the mposition and the payment of the tax then the fact of the pay-ent with the name of the taxpayer and the amount paid by him ust be made available for public inspection. It could only be a iolation of the law if it could be construed as printing and pub-ishing by indirection a part of the return. In all probability the Congress had this in mind when it provided that the name and mount paid by a taxpayer should be made available for public nspection. Moreover, the inhibition of the section is directed gainst the publication "in any manner whatever" of any portion f the return "not provided by law." If, therefore, the amount paid s a tax may be construed as part of the return, it was excepted rom the provisions of the penal statute, for its publication is in a

measure provided for by law in this, that it must be made available for public inspection.

51 Section 3167, Revised Statutes, reenacted as a part of the revenue law of 1924, forbids any officer of the Government from divulging or making known in any manner whatever the amount or source of income, or any particulars thereof set forth or discussed in any income return. Yet such officer by another section of the statutes is required to expose to public inspection a list of all income-tax payers with the amount paid by each. It would be strange indeed if an interpretation more favorable to an officer should be made than to the unofficial person mentioned in practically the same language in the same statute.

It is my judgment that the name of the tax payer and amount paid by him was not considered by the law makers such an important part of the return as to cover it with the cloak of secrecy. Even if the Congress sought to maintain a measure of secrecy upon this information, it not only exceeded its authority but impinged upon the first amendment to the Constitution. In view of the foregoing, the demurrers of the several defendants will be sustained.

Kansas City, Missouri.

ALBERT L. REEVES,
U. S. District Judge.

52 In United States District Court

Clerk's certificate

I, Edwin R. Durham, clerk of the District Court of the United States for the Western District of Missouri, do hereby certify that the foregoing is a full, true, and complete copy of the record, assignment of errors, and all proceedings in the cause wherein the United States of America is plaintiff and Walter S. Dickey and Ralph Ellis are defendants, No. 6812, as fully as the same appears on file and of record in my office.

I further certify that the original citation and writ of error are prefixed hereto and returned herewith.

Witness my hand as clerk and the seal of said court. Done at office in Kansas City, Missouri, this 6th day of December, A. D. 1924.

EDWIN R. DURHAM, *Clerk.*
[SEAL.] By H. C. SPAULDING, *Deputy Clerk.*

(Indorsement on cover:) File No. 30,733. W. Missouri D. C. U. S. Term No. 768. The United States of America, plaintiff in error, vs. Walter S. Dickey and Ralph Ellis. Filed December 11th, 1924. File No. 30,733.

○

UNITED STATES *v.* DICKEY ET AL.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

No. 768. Argued April 16, 17, 1925.—Decided May 25, 1925.

1. Assuming that no constitutional right of the tax-payer is invaded, the question whether income-tax returns shall be published or kept secret is addressed to the discretion of Congress. P. 386.
2. Section 257 (b) of the Revenue Act of June 2, 1924, directs the Commissioner of Internal Revenue to prepare, each year, and make "available to public inspection in such manner as he may determine, in the office of the collector of each internal revenue district and in such other places as he may determine, lists containing the name and post-office address of each person making an income-tax return in such district, together with the amount of the income-tax paid by such person." The same act (§ 1018) reenacts § 3167 Rev. Stats., which makes it a misdemeanor to print or publish in any manner whatever "not provided by law" any income return or any part thereof, etc. *Held*, in view of the legislative history of these provisions and the evident policy of the Act to secure publicity of the information authorized to be put into the lists, that publication by newspapers of the names and amounts of taxes so listed is not within the inhibition of § 3167. P. 385.

3 Fed. (2d) 190, affirmed.

ERROR to a judgment of the District Court sustaining a demurrer to an indictment accusing the editor and the managing editor of divers newspapers of printing and publishing parts of federal income-tax returns, in violation of § 1018 of the Revenue Act of June 2, 1924, reënacting Rev. Stats. § 3167.

The Solicitor General for the United States.

Section 3167, Rev. Stats. reënacted as § 1018 of this Revenue Act, has been a provision of the Income Tax Law since the first act adopted under the Sixteenth Amendment. It was not changed in the Revenue Act of 1924 nor was there any attempt from the introduction to the adoption of the act to change this provision.

The complete return required by the law and regulations is the "return," the printing or publishing of the whole or any part of which is prohibited by § 3167. The name of the taxpayer and the amount of his tax certainly are parts of this return. It can not be doubted that, at least prior to the enactment in 1924, publication of the name of an income taxpayer and the amount of his tax was under the law a crime. Was the law changed in this regard by subdivision (b)? As between §§ 257 and 1018 the latter is the last expression of the legislative will and as such prevails if between them exists, as we think there does not, an irreconcilable conflict. *Merchants National Bank of New Haven* v. *United States*, 214 Fed. 200. If the familiar rules of construction be applied and the two sections read together, their effect is to authorize the Commissioner of Internal Revenue to make available to public inspection, in the offices of Collectors of Internal Revenue, or such other places as he may determine, lists showing the names of taxpayers and the amounts of income tax, respectively, paid by them, but not to authorize the publication of such lists, for the reason that they comprise data derived from and constituting part of income-tax returns, the printing or publishing of which, unless authorized by law, is specifically prohibited.

The phrase "available to public inspection" does not import a right "to print or publish." *Pabst Brewing Company* v. *Crenshaw*, 198 U. S. 17. "Public" is defined as meaning "open to the knowledge or view of all; general; common; notorious . . . open to com-

mon or general use." So "available to public inspection" merely means open to all to examine and view. But "to print or publish" means something entirely different. "Publish" is defined, when used in connection with newspapers, as meaning "to bring before the public as for sale or distribution"; especially to print, or cause to be printed, and to issue from the press, either for sale or general distribution. The use of the word "print" in connection with "publish" in § 3167, Rev. Stats., is significant. It gives emphasis to the fact that the word "publish" as there employed is used in the sense of distribution by the press. The distinction between "inspection" and "print or publish" is shown in § 257 itself, in subdivision (a) thereof. So also a distinction is made by Congress in the section immediately following § 257. This gives the only authorization to "publish" income-tax data to be found in the Revenue Act of 1924. That by "inspection" as used in §§ 257 (a) and 257 (b) is meant only the right to examine or view and nothing more, is further shown by the fact that in the first proviso in 257 (a), giving certain congressional committees the right to "inspect" returns Congress deemed it necessary to affirmatively provide that the information so obtained "may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and House, as the case may be." The necessary inference is that, in the absence of this specific authority, the right to inspect would not carry with it the right to communicate the information so obtained even to the Congress itself.

If Congress had intended to open the doors to unlimited inspection, it would not have been so careful to make the right of inspection subject to the discretionary powers of the Commissioner of Internal Revenue. For this there were obvious reasons. The inspection may be asked for a legitimate purpose, or it may be asked from

idle curiosity, or even from an attempt to injure the credit of another. Many States have statutes which require the lists of stockholders to be available to the stockholders, but it has been held that such a right can not be exercised for an improper purpose. Similarly, in respect to the present law, Congress obviously intended that the Commissioner should allow a reasonable inspection—that is—for legitimate purposes.

That § 3167, Rev. Stats., was designed to meet just such contingencies is clearly shown when that section is viewed as a whole. It is in two distinct parts. The first part relates to the divulging of information contained in returns by employees who, of course, have free access thereto, and the second part to the printing or publishing of any part of a return by any other person. Manifestly, by two such distinct provisions, it was intended to protect not only the source of information but also to guard it in any channel in which it might subsequently flow. As to the contention that this construction leads to an absurd result, in that it punishes one for publishing in printed form what he is at liberty to communicate orally, it is sufficient to say that such is quite frequently the case with regard to many laws. For instance, one may communicate by word of mouth information concerning lotteries which he may not print and send through the mails. Again, one may orally recite any portion of a copyrighted book which it would be unlawful for him to print or publish. Such examples could be multiplied indefinitely.

In construing these sections the fact that they are penal has not been lost sight of, but effect is to be given to the plain meaning of the language of penal statutes in the same manner as in the case of other statutes. *Bolles* v. *Outing Company,* 175 U. S. 262; *Wilson* v. *Wentworth,* 25 N. H. 245, 247.

As to whether a person has, in the absence of express statutory authority, the right to inspect and take memo-

randa from public records for the purpose of publication, See 34 Cyc. 594; *Buck* v. *Collins*, 51 Ga. 391; *In re License Docket*, 4 Pa. Dist. 162; 23 R. C. L. 160; *In re Caswell*, 18 R. I. 835, and Note 27 L. R. A. 82; *Belt* v. *Abstract Co.*, 73 Md. 289.

The provisions of Rev. Stats. § 3167 are within the powers conferred upon Congress by the Constitution. They do not constitute an invasion of the rights secured by the First Amendment.

Mr. M. H. Winger and *Mr. James A. Reed*, with whom *Mr. David M. Proctor* was on the brief, for defendants in error.

From 1798 to 1870 the law not only permitted, but required full publicity of tax returns. In the laws of 1870 to 1894 such limitations as were put upon publication of returns applied only to tax assessors and their deputies. In 1894 the law for the first time attempted to prevent newspapers from publishing the returns; but even this law permitted publication when "provided by law." The law of 1894 having, so far as its income tax provisions were concerned, been almost immediately declared to be unconstitutional, the provision relating to publicity of returns remained practically a dead letter until the Constitution was amended, and the law of 1913 enacted.

The law of 1913 greatly enlarged the right of publicity. It declared the returns to be public records; it made them open to inspection by all persons on order of the President; it gave the state officers the right to inspect the returns without the permission of the President, and it placed no limitation upon publicity of facts ascertained by the state authorities.

The law of 1918 further enlarged the right of publicity in two important particulars. It authorized stockholders to examine corporate returns, but imposed heavy penalties for publishing the facts thus learned; it introduced

an entirely new subject which did not relate to publicity of returns, but to the preparation by the Commissioner of lists containing the names and addresses of taxpayers, and the publication of such lists in the office of the Collector of Internal Revenue in each district, and in such other places as the Commissioner may determine.

In 1924 an effort was made in the House of Representatives to grant full publicity for all returns. This contention was compromised in the House by providing that the committees of Congress could have access to the returns and the decisions made thereon, and could report the facts to Congress, without limitation upon publicity of facts gathered by the committees of Congress, or the proceedings of Congress relative thereto. When the bill reached the Senate it was amended so as to provide full publicity of returns. In conference, the disputes between those who wanted secrecy and those who wanted absolute publicity was compromised by adding to the provision for the publication of lists of names and addresses of taxpayers, a provision that the amount of taxes paid should also be stated in the lists.

The clear intention of Congress was to preserve secrecy as to the private information contained in the returns, but to give full publicity in the published lists to the names and addresses of the taxpayers and the amounts ultimately paid.

The Federal Government cannot prepare a list of taxpayers, declare that list to be a public record, publish its contents to every person who cares to read and make it available to every person who cares to look at it, and then send a man to jail for talking or writing about that which the Government has already made public; and the imposition of any such penalty is in violation of the First and Tenth Amendments to the Constitution of the United States. If publication in a newspaper of any part of the

lists be a crime, then publication by word of mouth is equally a crime.

It is claimed that the publication of the lists interferes with the government in the collection of its taxes. The answer is that the tax has already been collected before the lists are made.

On the question of the right of free speech and liberty of the press, the only limitations which have ever been placed on these rights by the courts are included under one of four heads, blasphemy, immorality, sedition and defamation or libel, which are discussed at length in *State* v. *Shepherd,* 177 Mo. 205.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

An indictment was returned in the court below charging defendants in error as owner-editor and managing editor of several newspapers published at Kansas City, Missouri, with printing and publishing therein parts of certain designated federal income-tax returns, showing the names of the tax payers and the amounts of their income taxes. Demurrers were interposed to the indictment upon the ground that the facts set forth were not sufficient in law to charge any crime against the defendants, because the information so published was open to public inspection, constituted a public record available to the general public, and, consequently, was proper matter for news publication; and that if any statute attempted to forbid or penalize such publication, it contravened the First Amendment to the federal Constitution which prohibits Congress from making any law abridging the freedom of speech or of the press. The court below sustained the demurrers and dismissed the indictment. 3 Fed. (2d) 190.

The indictment is drawn under that part of § 1018 of the Revenue Act of June 2, 1924, c. 234, 43 Stat. 253, 344–346, which reënacts R. S. § 3167, copied in the

margin.[1] Section 257(b) of the same act, 43 Stat. 293, provides: "The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income-tax return in such district, together with the amount of the income tax paid by such person."

The prohibition against publication contained in § 3167, it will be seen, is not absolute, but subject to possible qualification by other provisions of law. The language is that it shall be unlawful to print or publish in any manner "not provided by law" any income return or any part thereof, etc. On behalf of defendants in error, it is contended that § 257(b) effects such a qualification. To this the Government replies that the extent to which that provision goes is to authorize the Commissioner of Inter-

[1] "Sec. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment."

nal Revenue to make available for public *inspection* lists showing names of tax payers and amounts of taxes paid by them; and that this falls short of authorizing the *printing* and *publishing* of the information contained in the lists.

Something is said in the briefs, and was said at the bar, as to the wisdom, on the one hand, of secrecy, and, on the other hand, of publicity, in respect of tax returns. But that is a matter addressed to the discretion of the law-making department, with which the courts are not concerned, so long as no constitutional right or privilege of the tax payer is invaded; and there is no contention that there is any such invasion here, whichever view may be adopted. The problem, therefore, is, primarily, one of statutory construction, the disposition of which will determine whether the constitutional question as to the freedom of the press needs to be considered. For the purposes of the inquiry, we assume the power of Congress to forbid or to allow such publication, as in the judgment of that body the public interest may require.

The Commissioner is directed to make the lists of tax payers and amounts paid available for public inspection in the office of the collector and elsewhere as he may determine. His discretion in that respect is limited only by his own sense of what is wise and expedient. And the inquiry at once suggests itself: To what end is this discretion, so vested in him, to be exercised? The obvious answer is: To the end that the names and addresses of the tax payers and the amounts paid by them may be generally known. To the extent of the information authorized to be put into the lists, this is the manifest policy of the statute, with which the application of § 3167 to the present case, it fairly may be argued, will be out of harmony. Whatever one's opinion may be in respect of its wisdom, the policy having been adopted as an aid to the enforcement of the revenue laws or to the accomplishment

of some other object deemed important, it is not easy to conclude that Congress nevertheless intended to exclude and severely to penalize the effective form of secondary publicity now under consideration. Information, which everybody is at liberty to acquire and the acquisition of which Congress seemed especially desirous of facilitating, in the absence of some clear and positive provision to the contrary, cannot be regarded otherwise than as public property, to be passed on to others as freely as the possessors of it may choose. The contrary view requires a very dry and literal reading of the statute quite inconsistent with its legislative history and the known and declared objects of its framers.

Prior to the adoption of the Sixteenth Amendment, the policy in respect of tax publicity, as evidenced by congressional legislation, had not been uniform. Generally, the earlier acts had been liberal and the later ones restrictive in character. Section 3167 R. S. first appeared in substantially its present form, in the Act of August 27, 1894, § 34, c. 349, 28 Stat. 509, 557. It was reënacted by the Revenue Acts of 1913, 1916, 1919 and 1921, and by the existing Act of 1924. The Act of 1913, c. 16, 38 Stat. 177, provided that tax returns should be open to inspection only upon order of the President; but allowed state officers under certain conditions to have access to the returns showing the names and income of corporations, etc. The Act of 1919, § 257, c. 18, 40 Stat. 1086, in addition to this, allowed stockholders of any corporation to examine its returns upon conditions therein stated. That act further provided (p. 1087) that the Commissioner should cause to be prepared and made available to public inspection, etc., "lists containing the names and the post-office addresses of all individuals making income-tax returns in such district"; and this was expanded by the present law, § 257(b), Act of 1924, to include the amount of the income tax paid.

It is significant that, while these progressively liberal publicity amendments were being made, § 3167—to the general rule of which they were in terms opposed—was carried along by reënactment without change, plainly indicating that, in the opinion of Congress, by the application of the qualifying clause "not provided by law," the scope of the general rule against publication would become automatically narrowed to the extent of the liberalizing exceptions. The congressional proceedings and debates and the reports of the conferees on the disagreeing votes of the two Houses, which we have examined but think it unnecessary to review, strongly confirm our conclusion that Congress, understanding that this limitation would apply, intended to open the information contained in the lists to full publicity.

As a result, we hold that, to the extent provided by § 257(b), Congress meant to abandon the policy of secrecy altogether and to exclude from the operation of § 3167 all forms of publicity, including that here in question.

Judgment affirmed.

MR. JUSTICE STONE took no part in the consideration or decision of this case.